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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/613,761

07/02/2003

Lishan Aklog

FLEX-001

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11/28/2007

CHRIS A. CASEIRO

VERRILL DANA, LLP

ONE PORTLAND SQUARE

PORTLAND, ME 04112-0586

EXAMINER

PREBILIC, PAUL B

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

11/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/613,761

Applicant(s)

AKLOG, LISHAN

Examiner

Paul B. Prebilit

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-8, 10, 12-23, 25-44, 50, 54 and 58-63 is/are pending in the application.
- 4a) Of the above claim(s) 5, 14-16, 18, 19, 21-23, 25, 26, 29-44, 54 and 58-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6, 7, 8, 10, 12, 13, 17, 20, 27, 28, and 63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

Election/Restrictions

Claims 5, 14-16, 18, 19, 21-23, 25, 26, 29-44, 50, 54, and 58-62 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 2004 where Group I (device) and Species E (Figure 3D) were selected for prosecution.

Elected Species E (Figure 3D) does not contain a netting of a "fabric made from threads or wires knotted, twisted, or woven to form a regular pattern with spaces between the threads" (MSN Encarta online dictionary). Furthermore, the term "netting" does not have a special definition and is not used in the specification. Therefore, it is not clear that the present claims fall within the scope of the elected species Figure 3D that does not provide a netting as conventionally defined.

Therefore, the Examiner will interpret the language "netting" broader than this ordinary definition and request that the term "netting" be deleted or replaced with a supported term that encompasses the structure of elected Figure 3D.

No support for the claim amendments was pointed out in the response filed October 31, 2007 even though it was required by the fourth paragraph in the "Conclusions" section in the March 12, 2007 Office action. Failure to point out support for any amendments may result in any future response being held non-responsive.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 6-8, 10, 12, 13, 17, 20, 27, 28, and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The new term "string-like" is indefinite and renders the claim scope unclear because it is equivalent to "or the like"; see MPEP 2173.05 (b) F that is incorporated herein by reference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6, 7, 8, 10, 12, 13, 17, 20, 27, 28, and 63 are rejected under 35

U.S.C. 102(e) as anticipated by Streeter (US 2006/0247492) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Streeter (US 2006/0247492) in view of Wright et al (US 5,306,296). Streeter anticipates the claim language where Figures 9 and 10 show rings with restraining members extending across the middle thereof; see also paragraphs [0029] to [0031]. Marks appear on Figure 9 on the top and bottom sides of that figure.

Alternatively, one may not consider the marks of Streeter as actual marks or merely an unintended feature of the drawing. However, Wright teaches that it was known to put marks on similar rings as a means of aiding insertion and orientation thereof during implantation; see column 4, lines 29-35 and column 14, lines 40-43. Therefore, it is the Examiner's position that it would have been obvious to put marks on the ring of Streeter for the same reasons that Wright teaches doing the same.

With regard to claim 3, the Applicant is directed to paragraph [0025].

With regard to claim 8, rigidity is a matter of degree and Streeter's ring (Figure 10) is considered rigid to the extent required by the present claim.

With regard to claim 28, Figure 10 looks D shaped such that the claim language is considered fully met.

Response to Arguments

Applicant's arguments with respect to the rejections have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Prebilic/
Paul Prebilic
Primary Examiner
Art Unit 3774